

**ARISTA'S SECOND AMENDED PROPOSED VERDICT FORM**  
**December 6, 2016**

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA  
SAN JOSE DIVISION

CISCO SYSTEMS, INC.,

Plaintiff,

v.

ARISTA NETWORKS, INC.,

Defendant.

Case No. 5:14-cv-05344-BLF (NC)

**VERDICT FORM**

When answering the following questions and filling out this Verdict Form, please follow the directions provided throughout the form. Your answer to each question must be unanimous. Some of the questions contain legal terms that are defined and explained in detail in the Jury Instructions. Please refer to the Jury Instructions if you are unsure about the meaning or usage of any legal term that appears in the questions below.<sup>1</sup>

<sup>1</sup> Source: N.D. Cal. Model Patent Jury Instruction C.3 (July 16, 2015).

**YOUR ANSWERS MUST BE UNANIMOUS****Copyright Infringement**

1. Has Cisco proven that Arista copied protected expression from any of Cisco's copyrighted works?

	Yes	No
	(For Cisco)	(For Arista)

- |                            |       |       |
|----------------------------|-------|-------|
| a. IOS user interface      | _____ | _____ |
| b. IOS-XR user interface   | _____ | _____ |
| c. IOS-XE user interface   | _____ | _____ |
| d. NX-OS user interface    | _____ | _____ |
| e. Cisco technical manuals | _____ | _____ |

**IF YOU ANSWERED "NO" FOR EVERY LINE IN QUESTION 1, PLEASE GO TO QUESTION 11.**

**IF YOU ANSWERED "YES" FOR ANY LINE IN QUESTION 1, PLEASE CONTINUE AND PROVIDE ANSWERS TO EACH CORRESPONDING LINE IN QUESTION 2.**

2. For the works for which you answered "Yes" in Question 1, has Cisco proven that any of Arista's works that you find contain copied protected expression are virtually identical to any of Cisco's copyrighted works as a whole (disregarding the unprotected elements of the works identified in Exhibit A attached to this verdict form)?

	Yes	No
	(For Cisco)	(For Arista)

- |                            |       |       |
|----------------------------|-------|-------|
| a. IOS user interface      | _____ | _____ |
| b. IOS-XR user interface   | _____ | _____ |
| c. IOS-XE user interface   | _____ | _____ |
| d. NX-OS user interface    | _____ | _____ |
| e. Cisco technical manuals | _____ | _____ |

1 **IF YOU ANSWERED “YES” FOR ANY LINE IN QUESTION 2 PLEASE CONTINUE**  
 2 **AND PROVIDE ANSWERS TO EACH CORRESPONDING LINE IN QUESTIONS 3-6.**  
 3 **OTHERWISE, PLEASE GO TO QUESTION 11.**

4 **Scenes a Faire and Merger**

5 3. For the works for which you answered “Yes” in Question 2, has Arista proven that Arista’s  
 6 use was justified by the defenses of *scenes a faire* and/or merger?

7 Yes No  
 8 (For Arista) (For Cisco)

- 9 a. IOS user interface \_\_\_\_\_
- 10 b. IOS-XR user interface \_\_\_\_\_
- 11 c. IOS-XE user interface \_\_\_\_\_
- 12 d. NX-OS user interface \_\_\_\_\_

13 **Fair Use**

14 4. For the works for which you answered “Yes” in Question 2, has Arista proven that Arista’s  
 15 use of any items that you found were not justified in Question 3 was “fair use”?

16 Yes No  
 17 (For Arista) (For Cisco)

- 18 a. IOS user interface \_\_\_\_\_
- 19 b. IOS-XR user interface \_\_\_\_\_
- 20 c. IOS-XE user interface \_\_\_\_\_
- 21 d. NX-OS user interface \_\_\_\_\_
- 22
- 23
- 24
- 25
- 26
- 27
- 28

**Copyright Misuse**

5. For the works for which you answered “Yes” in Question 2, has Arista proven that Cisco misused its copyrights?

Yes	No
(For Arista)	(For Cisco)

- |                          |       |       |
|--------------------------|-------|-------|
| a. IOS user interface    | _____ | _____ |
| b. IOS-XR user interface | _____ | _____ |
| c. IOS-XE user interface | _____ | _____ |
| d. NX-OS user interface  | _____ | _____ |

**Copyright Abandonment**

6. For the works for which you answered “Yes” in Question 2, has Arista proven that Cisco abandoned its copyrights?

Yes	No
(For Arista)	(For Cisco)

- |                          |       |       |
|--------------------------|-------|-------|
| a. IOS user interface    | _____ | _____ |
| b. IOS-XR user interface | _____ | _____ |
| c. IOS-XE user interface | _____ | _____ |
| d. NX-OS user interface  | _____ | _____ |

**IF YOU ANSWERED “NO” TO ALL OF QUESTIONS 3 THROUGH 6 FOR ANY OF THE LINES, PLEASE CONTINUE TO QUESTION 7. OTHERWISE, PLEASE GO TO QUESTION 11.**

**Copyright Damages**

7. Has Cisco proven that it lost profits as a result of the infringement?

Yes No

(For Cisco) (For Arista)

\_\_\_\_\_

**IF YOU ANSWERED “NO” TO QUESTION 7, PLEASE GO TO QUESTION 9.**

**IF YOU ANSWERED “YES” TO QUESTION 7, PLEASE CONTINUE TO QUESTION 8.**

8. What amount of lost profits do you award to Cisco for Arista’s infringement of Cisco’s copyright?

\$\_\_\_\_\_

9. Has Cisco proven that Arista earned profits as a result of the infringement?

Yes No

(For Cisco) (For Arista)

\_\_\_\_\_

**IF YOU ANSWERED “NO” TO QUESTION 9, PLEASE GO TO QUESTION 11.**

**IF YOU ANSWERED “YES” TO QUESTION 9, PLEASE CONTINUE TO QUESTION 10.**

10. What amount of Arista’s profits do you award to Cisco for Arista’s infringement of Cisco’s copyright that you did not already award in Question 8 as lost profits?

\$\_\_\_\_\_

**Patent Infringement**

11. Has Cisco proven that Arista infringed claims 1 and 14 of the '526 patent?

	Yes	No
	(For Cisco)	(For Arista)

a. Claim 1                      \_\_\_\_\_

b. Claim 14                     \_\_\_\_\_

**IF YOU ANSWERED "NO" IN QUESTION 11 FOR BOTH CLAIMS OF THE '526 PATENT, PLEASE GO TO THE END OF THIS VERDICT FORM AND SIGN AND DATE IT.**

**IF YOU ANSWERED "YES" IN QUESTION 11 FOR ANY CLAIM OF THE '526 PATENT, PLEASE CONTINUE TO QUESTION 12.**

12. What amount of damages do you award Cisco for Arista's patent infringement?

\$ \_\_\_\_\_

13. Has Cisco proven that it is highly probable that from an objective point of view the defenses put forth by Arista failed to raise any substantial question with regard to patent infringement, validity, or enforceability of the patent claim?

Yes	No
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_____	_____
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**IF YOU ANSWERED "NO" TO QUESTION 13, PLEASE GO TO THE END OF THIS VERDICT FORM AND SIGN AND DATE IT.**

**IF YOU ANSWERED "YES" TO QUESTION 13, PLEASE ANSWER QUESTION 14.**

14. Has Cisco proven that Arista willfully infringed the '526 patent through the sale of EOS+?

Yes	No
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_____	_____
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**PLEASE SIGN AND DATE BELOW.**

\_\_\_\_\_  
**Foreperson**

Date:\_\_\_\_\_

**Exhibit A – Unprotected Elements of Cisco’s Works**

**As you have been instructed by the Court, the following elements of Cisco’s copyrighted works are unprotected matter:**

1. [Unprotected elements already identified in Preliminary Instruction No. 12]
2. [Any additional unprotected elements identified in analytic dissection]
3. The CLI Commands listed in the chart below:

[Chart listing any commands found unprotectable – TBD after analytic dissection]

4. The Modes & Prompts listed in the chart below:

[Chart listing any modes/prompts found unprotectable – TBD after analytic dissection]

5. The Help Descriptions listed in the chart below:

[Chart of any help descriptions found unprotectable – TBD after analytic dissection]